

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

David M. Lucas, et al.,

Plaintiffs,

v.

Jos. A. Bank Clothiers, Inc.,

Defendant.

Case No.: 14-cv-01631-LAB-JLB

**ORDER GRANTING PLAINTIFFS'
MOTION TO COMPEL**

[ECF No. 36]

The Court hereby GRANTS Plaintiffs' motion to compel documents from Defendant (ECF No. 36) as follows:

1. Plaintiff's motion is deemed timely. On April 7, 2015, Defendant served its written objections to the document requests at issue in Plaintiffs' motion to compel. (ECF No. 36-2.) Pending at that time was Defendant's motion for judgment on the pleadings, which, if granted in full, would result in dismissal of this action. (ECF No. 15.) Then, on May 11, 2015, the district court issued its order granting in part and denying in part Defendant's motion for judgment on the pleadings. (ECF No. 33.) On June 12, 2015, Plaintiff's counsel sought the Court's assistance with the discovery disputes at issue. (ECF No. 34.) A minute order followed granting Plaintiffs leave to file a motion to compel by June 18, 2015. (ECF No. 35.) Plaintiffs filed the instant motion to compel on June 18, 2015. (ECF No. 36.) Having considered the unique procedural history of this case, the Court deems Plaintiff's motion (ECF No. 36) to be timely filed despite the Court's Civil Chambers Rule requiring discovery disputes be brought to the attention of the Court within thirty calendar days of the dispute arising.

1 **2. Defendant shall produce documents responsive to Request Nos. 5, 6, 10,**
 2 **13, 14, 17, 18, 20, 21, 24, 25 and 26 (documents relating to the sale or marketing of**
 3 **sportcoats or dress slacks).** The Court overrules Defendant's objection that Plaintiffs
 4 do not have standing to pursue discovery on products they did not purchase (i.e. sport
 5 coats and dress slacks). The discovery sought is relevant because, as alleged, Plaintiffs
 6 seek to bring claims on behalf of themselves and a plaintiff class defined as:

7 All persons who, while in the state of California and within four
 8 years of the filing of this Complaint (the "Class Period"),
 9 purchased a suit, dress pants and/or sportcoats/suit jackets from
 10 Jos. A. Bank, where the purchase price of the item was for a
 11 percentage or discount off an advertised former price, or where
 12 the purchase was for a suit, dress pants and/or sportcoat/suit
 jacket based on a former price in connection with an offer of at
 least one other "free" item of Jos. A. Bank apparel.

13 (ECF No. 11 at 11-12, ¶50.) Whether Plaintiffs have standing to represent this class may
 14 be raised in conjunction with the parties' class certification briefing. Accordingly, by
 15 **August 14, 2015**, Defendant shall supplement its written responses, and serve its
 16 complete document production and privilege log responsive to Plaintiffs' First Set of
 17 Requests for Production Nos. 5, 6, 10, 13, 14, 17, 18, 20, 21, 24, 25 and 26.

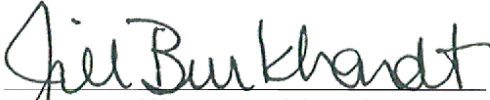
18 **3. Defendant shall produce documents responsive to Request Nos. 2, 7 and**
 19 **22 (profit margins and costs of goods sold).** The Court overrules Defendant's objection
 20 that its profit margins and costs of goods sold are not relevant. The requests at issue seek
 21 information relevant to the issue of restitution. *See Johns v. Bayer Corp.*, No. 09cv1935-
 22 AJB (DHB), 2012 WL 1520030, at *4-*5 (S.D. Cal. Apr. 30, 2012) ("although the Court
 23 does not decide which proffered measure of restitution should apply here, it is reasonable
 24 to conclude that [Defendant's] profits and expenses are . . . relevant to this litigation and
 25 discoverable"). Accordingly, by **August 28, 2015**, Defendant shall supplement its
 26 written responses, and serve its complete document production and privilege log
 27 responsive to Plaintiffs' First Set of Requests for Production Nos. 2, 7 and 22.

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1 **4. Defendant shall produce documents responsive to Request Nos. 8 and 9**
2 **(communications regarding pricing strategy).** The Court overrules Defendant's
3 objection that its communications regarding pricing strategy are not relevant to class
4 certification. Discovery in this case is not bifurcated, and Defendant has not met its
5 burden of showing that producing the communications at issue prior to a ruling on class
6 certification would be unduly burdensome. Accordingly, by **August 28, 2015**, Defendant
7 shall supplement its written responses, and serve its complete document production and
8 privilege log responsive to Plaintiffs' First Set of Requests for Production Nos. 8 and 9.

9 **IT IS SO ORDERED.**

10 Dated: August 6, 2015


Hon. Jill L. Burkhardt
United States Magistrate Judge